

**BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



Order Instituting Rulemaking into the Review of
The California High Cost Fund B Program.

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**REPLY COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION OF COMMISSIONER CHONG**

December 17, 2007

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I. INTRODUCTION

The Utility Reform Network (TURN) hereby submits its Reply Comments on the Proposed Decision of Commissioner Chong (PD). Nearly every party has pointed out that the legal authority the Commission is relying on to establish the CASF is questionable. TURN agrees with DRA¹ and other parties who have suggested that the best course of action would be for the Commission to seek Legislative authority to offer a CASF. In TURN's view, problems with the CASF as set forth in the PD do not stem from the question of whether broadband to unserved areas is good, bad or ugly. Our concern is whether the PD sets forth a program to extend broadband that is fair, effective and legal. It does not. Legal authority notwithstanding, TURN offers the following response to arguments pertaining to other issues as set forth by parties in opening Comments.

II. OPENING COMMENTS POINT TO THE NEED TO "DECOUPLE" THE DEPLOYMENT DATA-SPEED BENCHMARK FROM THE "UNSERVED/UNDERSERVED" BENCHMARK.

In opening comments, many parties have recognized a basic problem associated with the PD's approach: the PD incorrectly applies a single standard for both *the evaluation* of broadband deployment plans, and the determination of unserved and underserved areas.² This is a fatal flaw in the PD which, fortunately, has a simple remedy. The Final Order should be revised to *decouple* the standard by which it determines whether an area is "unserved" or "underserved" from the data speed benchmark. The data speed benchmark should be utilized to prioritize applications for CASF funds, not to determine whether an area is unserved or underserved.

Cox proposes to remedy the ambiguity created by the PD's approach to defining "unserved" areas by "funding projects only in *unserved* areas where market conditions have not provided sufficient incentive for commercial investment by any provider."³ The Commission would certainly get the biggest "bang for the buck" if the expenditure of CASF monies results in the "first" broadband deployment of any type, and TURN agrees that areas with no broadband should receive top priority. But beyond those areas where it can be quantified that there is no broadband of any type available, the determination of "unserved" may best rely on the FCC's definition of "advanced services," i.e., speeds of 200 kbps or better in each direction—if this basic threshold is not met, then an area should be deemed unserved.

TURN agrees with Cox, CCTA, DRA and The Small LECs that the Commission must prioritize the distribution of funds, with the emphasis on the absence of broadband service (such as areas with only satellite or dial-up offerings).⁴ However, even if the PD is modified to redefine unserved areas to be those without service that can deliver 200 kbps in each direction, the Commission should carefully consider, in its overall prioritization of the distribution of CASF funds, whether it does in fact make sense to support new investment in areas which may have low grade service from a single source. The Commission should evaluate the potential application of

¹ DRA Comments, p. 5.

² See, AT&T Comments, p. 1; Verizon Comments, p. 1; "Small LECs" Comments, p. 1; CCTA Comments, p. 2.

³ Cox Comments, p. 3, *emphasis added*.

⁴ *Id.*, CCTA Comments, p. 2-3, DRA Comments, p. 6-7, The Small LECs Comments, p. 3; see also TURN Reply Comments on Phase II Issues, October 3, 2007, p. 8.

funds to such underserved areas on a case-by-case basis and rank alternative funding opportunities based on the current grade of service available, with the areas with the lowest quality service receiving the highest priority. As both Cox and TURN pointed out, the Commission must be sure that the subsidy monies, wherever they are applied, are not used to fund video deployment.⁵

III. THE COMMISSION SHOULD REJECT ARGUMENTS TO ADOPT A LOWER BENCHMARK FOR EVALUATING CASF APPLICATIONS.

As several of the parties assert, the PD's proposed benchmark of 3/1 Mbps outstrips current DSL deployments, and some parties allege that the 3/1 Mbps standard exceeds "market norms, and thus, should not be adopted."⁶ Contrary to the arguments of these parties, a standard for evaluating CASF proposals that exceeds "market norms" is appropriate because it encourages the deployment of new technologies.

As noted by AT&T, "everyone agrees that higher speeds are better."⁷ Verizon notes that where higher data speed services are available "the two most popular residential variations (offer) speeds up to 5/2 and 15/2 Mbps."⁸ While Sprint/Nextel argues that 768 upload speeds are "adequate" for working at home or "for that matter, for working from an office,"⁹ Sprint/Nextel apparently believes that data speeds of 1.5 Mbps upstream must be desirable, otherwise, why does Sprint/Nextel also indicate that its "soon to be deployed" WiMax technology will have upstream data speeds of 1.5 Mbps?¹⁰ Thus, where services with higher upload speeds become available, they are the "most popular." It is also notable that Verizon has recently deployed a new FiOS offering which provides symmetrical 20 Mbps service, because, according to Verizon, symmetrical offerings redefine how the Internet may be used, and enable dramatic improvements in how Internet-based innovation can take place:

"Our 20/20 FiOS service changes everything by creating an entirely new category of U.S. broadband where 'fast' means fast in both directions. . . . Our new FiOS service will encourage applications developers to create even more ways for consumers to benefit from immense upstream connectivity." . . .

The equally fast upload and download speed of the new symmetrical FiOS service also enhances interactive services like video conferencing, online multi-player gaming, telemedicine, electronic home monitoring, online work collaboration, data backups and more. . . .

"Verizon's new symmetric service is a smart response to the changing usage patterns of high-speed Internet subscribers," said Vince Vittore, senior analyst with Yankee Group. "We believe that as user-generated content continues to expand and telecommuting increases in popularity, upstream speed will become just as important as downstream for all users."¹¹

⁵ Cox Comments, p. 4, TURN Comments, p. 7-8.

⁶ Verizon Comments, p. 3; Sprint/Nextel Comments, p. 6.

⁷ AT&T Comments, p. 1.

⁸ Verizon Comments, p. 3.

⁹ Sprint/Nextel Comments, p. 6. (Apparently Sprint/Nextel must not be interested in applications such as off-site file back-ups or videoconferencing, which require higher upload speeds.)

¹⁰ Sprint/Nextel Comments, footnote 2, p. 1.

¹¹ "Verizon Redefines 'Fast' With Groundbreaking FiOS Internet Service Featuring 20 Mbps Download and Upload Speeds," Verizon Press Release, October 23, 2007. Material in quotations attributed to Susan Retta, vice president, Broadband Solutions for Verizon. <http://newscenter.verizon.com/press-releases/verizon/2007/verizon-redefines-fast->

Thus, if anything, the PD does not go far enough and the final decision should push the envelope of what services are deployed with CASF funds. As DRA points out, speeds at 3 mbps download and 1mbps upload "*may* be adequate as *minimum* speeds..."¹² The Commission should be looking forward, not backward. It should not adopt a benchmark speed that even today reflects the minimum adequate speed. The 10 Mbps speed described by TURN in its December 10, 2007 comments (with funding preference given to symmetrical deployments), is a reasonable benchmark. As TURN also pointed out, this benchmark reflects speeds associated with currently deployed technologies, such as Verizon's FiOS, and Cox, Time Warner, or Comcast offerings,¹³ and would serve as a reasonable, forward looking benchmark for evaluating applications for CASF funding.¹⁴

IV. THE COMMISSION SHOULD ADOPT DRA'S PROPOSALS REGARDING RELIABLE AND VERIFIABLE SPEEDS AND THE TRACKING OF OUTAGES AND COMPLAINTS.

DRA argues that the broadband speeds adopted as a minimum requirement must be reliable and verifiable, and that these speeds should be guaranteed to be available most of the time.¹⁵ While TURN believes that the speed standard adopted in the Final Order should serve as a benchmark for judging deployment rather than an absolute requirement for every application, we agree wholeheartedly with DRA that the speeds set forth in an approved application should be reliable, verifiable and guaranteed to be available most of the time and that the Commission must have a means of ensuring this.¹⁶ Importantly, when determining whether a carrier has met the agreed upon requirements, the measurement of data speeds must account for the fact that "last mile" facilities can be engineered to provide satisfactory data speeds, but that additional facilities must be provided -- and sometimes obtained from other carriers -- to connect to the Internet.¹⁷ Assessment of a provider's compliance should take both of these components of the data link into account.¹⁸

DRA's Comments also point to the importance of service availability and reliability.¹⁹ The establishment of service quality standards and measurement criteria will also be useful in determining whether service quality shortfalls are the result of performance deficiencies associated with the subsidy recipient, or perhaps another entity e.g., anti-competitive behavior by wireline carrier whose facilities are leased to provide the subsidized service.

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¹² DRA Comments, p. 9, *emphasis added*.

¹³ See: <http://www22.verizon.com/content/consumerfios/faqs/faqs.htm>
<http://www.cox.com/sandiego/highspeedinternet/default.asp>
<http://comcast.usdirect.com/comcast-highspeed-internet-.html>
<http://www.timewarnercable.com/SoCal/Products/Internet/RoadRunner/speed.html>

¹⁴ TURN's December 10, 2007 Comments identify a 10 Mbps standard should be understood as a *deployment* benchmark associated with the quality of the new services to be deployed, as discussed in the PD at page 28, item (2). *TURN is not proposing 10 Mbps as the standard for determining whether or not an area is eligible for subsidy.*

¹⁵ DRA Comments, p. 9-10.

¹⁶ TURN Comments, p. 10.

¹⁷ TURN Reply Comments on Phase II Issues, p. 8.

¹⁸ TURN Comments, p. 9.

¹⁹ DRA Comments, p. 9-10.

V. THE CASF, IF REVISED ACCORDING TO THE RECOMMENDATIONS OF TURN AND OTHER PARTIES, WOULD INCREASE SERVICE OPTIONS FOR CUSTOMERS AND WOULD NOT DETER COMPETITION.

There is a considerable discussion in the Comments regarding whether the CASF funds should be utilized to fund “competition,” i.e., offering subsidy to promote new investments in markets which are defined as “underserved.”²⁰ Sprint/Nextel indicates that the provision of subsidy dollars that might fund entry will undermine the incentives of firms to enter markets in the first place.²¹ Sprint/Nextel’s argument overlooks the fact that the incumbent firm could compete for the CASF funds. If the incumbent were to have a superior plan, as compared to other potential entrants, it could use CASF funds to upgrade its network. Thus, the distribution of CASF monies, if accomplished through a competitive bidding process, would create a “level playing field” between potential entrants and incumbents, and eliminate the Sprint/Nextel’s alleged negative incentive. However, for the same reasons discussed by TURN in its November 9, 2007 Comments regarding the Commission’s proposed auction mechanism in the CHCF-B proceeding, competitive bidding for CASF subsidy should result in only a single subsidy recipient in each market area.²² The issue of bidding for CASF distribution is briefly discussed later in these Reply Comments.

The Commission should not be swayed by the blatantly anti-competitive rhetoric that is offered in some of the Comments. Somewhat ironically, this rhetoric is loudest from Sprint/Nextel, which has often portrayed itself a “new market entrant” in other proceedings. In this case, however, Sprint/Nextel characterizes the potential for new entry and competition in markets which have only one current provider (i.e., monopoly markets) as a threat from “Johnny-come-latelys.”²³ Sprint/Nextel goes on to offer a perspective which clearly illustrates the flaws in Sprint/Nextel’s argument:

[M]arket forces have not failed: market forces have shown those who would invest the funds necessary for bringing broadband to California that, in certain areas, there is not sufficient demand to warrant making the substantial investments necessary for providing broadband service. Investors perceive that, in certain areas, costs would be high and rewards would be low. This is the operation of market forces *par excellence*.²⁴

Sprint/Nextel completely ignores the fact that broadband is extremely important to both residential and business customers living and working throughout the state. As the Commission has recognized, the operation of market forces “*par excellence*” has come up short with respect to broadband, and corrective action is required. Under these circumstances, market entry stimulated by a properly designed and implemented CASF has the potential to offer benefits to consumers, especially if the only service provider is a mobile wireless company. The other component of Sprint/Nextel’s argument is that the Commission’s plan unfairly disadvantages the incumbent

²⁰ See, for example, AT&T Comments, p. 9-10.

²¹ Sprint/Nextel Comments, p. 4.

²² TURN Comments, November 9, 2007, p. 16-18.

²³ Sprint/Nextel Comments, p. 2.

²⁴ Sprint/Nextel Comments, p. 2.

monopolist who may have “pioneered” the market.²⁵ It is not clear which economic theory Sprint/Nextel is relying on to support this proposition, and “first mover” advantages are recognized to be short lived in markets where competition is possible.²⁶ The Commission should not be swayed by Sprint/Nextel’s pleas to protect monopoly power which is failing to deliver affordable and high quality broadband.

VI. AT&T HAS CORRECTLY ARGUED THAT THE PD'S BID PROCESS IS FLAWED, BUT THE PD CAN BE MODIFIED TO ADDRESS THE PROBLEM IDENTIFIED BY AT&T.

AT&T notes that the “counter-application” bid submission process described in the PD would be subject to gaming.²⁷ TURN agrees that the process proposed in the PD at page 25 is fundamentally flawed. However, the PD could be modified to apply auction theory in the distribution of CASF funds. We addressed this issue in the November 9, 2007 comments filed regarding the proposed reverse auction process.²⁸ With regard to unserved areas, the Commission may be able to avoid many of the problems which arise when auctioning subsidies in areas with an incumbent. As a result, applying common auction tools, such as a sealed bid process, would improve the outcome over the structure contained in the PD and mitigate the potential for gaming identified by AT&T. As was discussed in detail in TURN's November 9, 2007 Comments regarding the proposed reverse auction process, it is more desirable to have a single subsidy recipient, and competition though the bidding process should encourage a single CASF subsidy recipient in each market area. Given the importance of the bidding structure, the Commission should seek additional comment on the mechanism used to distribute CASF funds.

VII. CONCLUSION

TURN’s primary concern is whether the PD sets forth a program to extend broadband that is fair, sbetter served if the Commission were to obtain Legislative authority to provide a program designed specifically for broadband, rather than piggy-backing on a fund intended to provide voice service. Nonetheless, should the Commission proceed to establish the CASF, it should adopt the proposals set forth in our Comments and Reply Comments.

Dated: December 17, 2007

Respectfully submitted,

_____/S/
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²⁵Sprint/Nextel Comments, p. 4.

²⁶For a recent statement of this proposition see: Paul A. Geroski and Constantinos C. Markides. *Fast Second: How Smart Companies Bypass Radical Innovation to Enter and Dominate New Markets*, John Wiley & Sons, 2005.

²⁷AT&T Comments, p. 10.

²⁸ TURN Comments, November 9, 2007, p. 16-18.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On December 17, 2007 I served the attached:

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION OF COMMISSIONER CHONG**

on all eligible parties on the attached lists to **R.06-06-028**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this December 17, 2007, at San Francisco, California.

/S/

Larry Wong

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